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THE demand for the April number, Vol. I., No. 1, was so great as to exhaust the edition some time ago. To complete some special volumes, the editors of the REVIEW are anxious to obtain a few copies of that number. The Treasurer will make a liberal offer for one or more copies.

DURING the month of January, 1888, seventy-five new members have been added to the Harvard Law School Association, representing 19 States and Territories. They are divided as follows: Massachusetts, 31; New York, 11; Ohio, 5; Illinois, 6; Connecticut, 3; New Hampshire, 3; Pennsylvania, 2; Wisconsin, 2; Delaware, Virginia, Arkansas, Vermont, Tennessee, Missouri, Louisiana, Kentucky, Rhode Island, and California, 1 each; and the District of Columbia, 2.

AN idea of the amount of legal business in England is given by some statistics in the London "Times." The list for Hilary term showed a falling off under every head but that of chancery causes, as compared with the same term of the previous year. The number of appeals entered numbered 189, as against 249 the year before. The number of actions in the Queen's Bench Division, 660, as against 1,052; and the total number of causes and actions entered in the various Divisions amounted to 2,235 for Hilary, 1887, as compared with 2,286 for Hilary, 1886, being a decrease of 51. In the Queen's Bench Division it is noticeable that the popularity of trials before a judge without a jury goes on increasing. In practically all cases a plaintiff or defendant can claim to have a jury, but it is found that for many classes of cases a judge sitting alone is the best tribunal, and that both parties willingly forego their right to a jury. It is not long ago since the cases for trial with juries were in proportion of two to one. This change in the taste of suitors may fairly be considered as evidence of an increasing faith in the impartiality of the judicial bench.

A RECENT number of the "New York Times" says that "of one hundred and forty-four decisions which had been appealed to the Supreme Court of New York, fifty-one were either reversed or modified. Only ninety-three of the decisions appealed from were sustained. This proportion means that the court below, in the opinion of the upper court, errs in every third case which is carried up. It is clear that in the fifty-one cases mentioned, one or the other set of judges has mistaken the law. This is no small matter, both to those immediately concerned and to the general public. A rough estimate of the damages caused to the litigants and the State would amount to about $15,000. To this must be added the losses caused by delay, both to the parties to the actions and to the jurors. Last, but not least, such a state of affairs is a direct blow at the dignity of the law, which, in order to accomplish its ends, should be kept above suspicion. There are only two plausible solutions of the uncertainty of the law: either the judges are careless and ignorant, or the legislature has so framed its statutes that their interpretation involves the courts in quibbles which, in many cases, are the direct means of defeating justice."

AN important decision has been recently made by the Interstate Commerce Commission[1] defining the extent to which the Interstate Commerce law applies to express companies. The conclusions reached are as follows:—

"In respect to some of the express companies there can be little, if any, doubt that they are fully subject to the provisions of the law. When a railroad company itself conducts the parcel traffic on its line by its ordinary transportation staff, or through an independent bureau organized for the purpose, or by means of a combination with other railroad companies in a joint arrangement for the transaction of this so-called express business, it will not be seriously questioned but that this branch of the traffic is subject to the Act to regulate commerce as fully as the ordinary freight traffic."

The case of independently organized express companies is, however, different. "A careful examination of the history and the language of the Act to regulate commerce has brought the Commission to the conclusion that the independent express companies are not included among the common carriers declared to be subject to its provisions as they now stand. The fact that a part of the express business of the country is, as above shown, within the Act, while another and a much larger part of the same business is not so described as to be embraced in the same statute, clearly points out the necessity of further legislative action. Either the entire express business should be left wholly on one side or it should all be included."

IN the "First Annual Report of the Interstate Commerce Commission" for 1887, which we have received, through the courtesy of Judge Cooley, this distinction between independent and associated express companies, with the need for further legislation, is strongly affirmed, and the following additional comments are made:—

"What is said of the express business is applicable, also, to the business of furnishing extra accommodations to passengers in sleeping

[1] Report and Opinion of the Interstate Commerce Commission in the matter of the Express Companies. Decided Dec. 28, 1887.

and parlor cars. These accommodations are furnished, in some cases, by the railroad companies, and in others by outside corporations, which are not supposed to be embraced by the terms of the law. Outside companies are also to some extent engaged in the transportation of live-stock in cars owned by themselves, but transported over the railroads under special agreements with the railroad companies which supply the motive-power. As these last named companies furnish better accommodations for live stock, and transport them with less liability to injury, and with less shrinkage than is done in the ordinary stock-car, it is not improbable that they, like the companies which furnish special accommodations for passengers, may in time build up a large business in respect to which they will not be controlled by any existing legislation.

"It is well known, also, that the transportation of mineral oil is already, to a very large extent, in tank-cars owned by parties who are not carriers subject to regulation under the act to regulate commerce.

"If it is the will of Congress that all transportation of persons and property by rail should come under the same rules of general right and equity, some further designation of the agencies in transportation which shall be controlled by such rules would seem to be indispensable."

IN the Annual Report[1] for 1886–87, President Eliot says of the Law School: "The number of students being large, the expenditures for instruction, Library and Reading-room service, and repairs and improvements were increased, and yet a satisfactory surplus remained at the end of the year. The admission examination tends to keep uneducated persons out of the School, and admits to the regular course every year a few men without collegiate training, among whom are sometimes found very successful students; but the number of persons who have gained access to the degree through that examination has been only about nine a year on the average since the examination was instituted in 1877."

PROFESSOR LANGDELL, in his report, gives an interesting account of the growth of the School in the last few years:—

"It is now just ten years since the three-years' course and the examination for admission went into operation. . . . By 1882–83, the three-years' course and the examination for admission, regarded as causes which diminished the size of the School, had spent their force, and henceforth an improvement is perceptible. Thus, in 1883–84, though the number of new entries was only eighty-six, an increase of two, the number of names on the catalogue was one hundred and forty-six, an increase of fifteen. In 1884–85 the number of new entries was one hundred and one, and the number of names on the catalogue was one hundred and fifty-three. The increase in the number of new entries was, however, abnormal; for the number of Harvard graduates who entered was fifty-six, being the largest number that has ever entered the School in any year, except 1879–80. In 1885–86 the number of new entries dropped to eighty-eight, a loss of thirteen, while the names on the catalogue numbered one hundred and fifty-four, a gain of one. There were therefore fourteen more old students in the School

[1] Annual Report of the President and Treasurer of Harvard College, 1886–87.

than in the preceding year, — a fact which finds a sufficient explanation in the relatively large number of entries in the preceding year.

"In the year now under review (1886–87) the evidence of improvement was so decisive that the success of the three-years' course, and of the examination for admission, no longer remained a question; for the number of new entries rose to one hundred and thirteen, a gain of twenty-five, while the number of names on the catalogue rose to one hundred and eighty, a gain of twenty-six. Nor was this large increase in numbers due to an unusual proportion of Harvard graduates; for, of the one hundred and thirteen who entered during the year, only forty-six were Harvard graduates, — ten less than in 1884–85, and thirteen less than 1879–80. Moreover, the experience of the now current year makes it clear that the increase in numbers in 1886–87 was a genuine and regular growth; for the number of new entries in the current year already amounts to one hundred and twenty-four, a gain of eleven over the whole number of new entries in the preceding year, and a gain of twenty over the new entries up to the corresponding date in the preceding year. Nor is this number swollen by an unusual proportion of Harvard graduates, the number of Harvard graduates who have entered thus far being only fifty. The names on the catalogue for the current year number two hundred and fifteen, a gain of thirty-five over the preceding year, and a gain of twenty-six over the largest number on any preceding annual catalogue. . . . The present third-year class, which numbers thirty, numbered only fifty-five in its first year; and it happens, oddly enough, that it was the smallest first-year class that we have had since the three-years' course has been established. That a class which numbered only fifty-five when it entered should now, in its third year, number thirty, may well be pronounced remarkable. If the present first-year class, which numbers eighty-nine, holds out proportionally well, it will give us a third-year class of forty-eight.

"As to the causes of the prosperity which the School has enjoyed since the beginning of the year 1886–87, I have nothing new to suggest. Doubtless the increase in the amount of instruction in the second and third years, and the making of all the instruction in those years elective — measures which went into effect at the beginning of the year 1886–87, — have had something to do with it; but I think the Harvard Law School Association, especially through the celebration which it held a year ago, has had more to do with it."

THE February "Atlantic"[1] contains an interesting article by F. G. Cook, a graduate of the Harvard Law School in the class of '85, describing the progress of the recent movement in European legislation to make marriage no longer a mere religious rite, but a compulsory civil ceremony. We give an outline of its main points.

During the latter part of the middle ages marriage was regarded on the Continent as primarily a civil contract, which, although it was generally publicly solemnized by the priests, depended for its validity simply on the consent of the parties.

In the middle of the sixteenth century the Council of Trent affirmed marriage to be a religious sacrament. The Catholic countries on the Continent quickly promulgated this decree as law. Its influence

[1] "The Marriage Celebration in Europe." The Atlantic Monthly, vol. lxi, p. 245.

spread gradually to Protestant lands. The belief that marriage is primarily a religious rite became established; by the close of the eighteenth century "a religious ceremony was generally regarded as indispensable. Such ceremony was then ordained by law, and the minister celebrating it was made the delegate of the civil power."

The reaction began with the French Revolution, which marked the beginning of a new epoch in marriage legislation. In 1787 a decree of Louis XVI. gave Protestants the option of celebrating their marriages before the civil authorities by means of *le mariage civil facultatif*. In 1792 the establishment of *le mariage civil obligatoire* made the civil celebration of marriage compulsory. This principle, that marriage is primarily a civil institution, survived the French Revolution, and in 1804 it was incorporated in the Code Napoleon, which reënacted *le mariage civil obligatoire*. The civil ceremony is compulsory; the banns are published by the registrar, or municipal officer, who, after the presentation of birth-certificates and affidavits of consent of the necessary parties, declares the parties united in marriage in the town-hall in the presence of witnesses, and in the name of the law. The registration of the marriage is then drawn up and signed.

A subsequent religious ceremony is optional.

Since that time the principle has rapidly spread. Recent history shows a tendency in European law to approach a "common type" of marriage celebration, — that of the French compulsory civil marriage. Italy adopted it in 1866; a large majority of the States of the German Empire followed suit in 1875.

"Switzerland, like France, Germany, Italy, Belgium, and Holland, has carefully separated the civil from the religious celebration, prescribing the former as the only source of the legal status, and the civil registry as the only means of proof. Even where this French principle has not yet been adopted, steps preparatory to this have been taken, and its substantial acceptance by most Continental countries seems near. That marriage is at least an institution of society, and as such its celebration must be guarded and regulated by the State for the common good, has become a fundamental principle."

British law is different. Even prior to the Council of Trent the presence of an Episcopal clergyman was always necessary to the legal validity of a marriage, although it might be clandestine. In 1653 Cromwell's Barebones Parliament established compulsory civil marriage, but for a day only. In 1753 Lord Hardwicke's Act did away with the validity of clandestine marriages and made solemnization *in facie ecclesiæ* the only legal form. At length, in 1836, Lord John Russell's Act introduced optional civil marriage. "Those persons unwilling to be married by Episcopal rites are permitted to resort either to the customs of any other denomination, or to a ceremony wholly civil." The presence of the civil registrar is required except for Jews and Quakers. Ireland and Scotland present some modifications, but in general "in the British Isles, as well as on the Continent, the development of the law is toward the adoption of the civil celebration of marriage. In both, laxity, multiplicity, and confusion are gradually giving place to strictness, unity, and definiteness. In both, the functions of the State, as compared with those of the Church, have constantly increased in extent and in importance. But while in the former the prevailing type is *le mariage civil facultatif*, in the latter it is *le mariage civil obligatoire*."

An address recently delivered before the Birmingham Law Students' Society by Sir Edward Clarke, English Solicitor-General,[1] has given renewed vitality to the movement in England to break down the distinction between barristers and solicitors, and make the legal profession into "one body, each member of which should be entitled to do any part of the work of the profession." The change is advocated as of benefit to the public, to barristers, and to solicitors.

The great hardship of the present system is the increased expense of litigation. The client engages a solicitor, and explains the case to him. In the County Court the solicitor can conduct the case alone, but, if the case comes up in a Superior Court, he must engage a barrister, for whose services the client pays. The barrister must then be instructed. All the facts are written out, the evidence copied, and a brief made out by the solicitor for the guidance of the barrister in pleading the case. All this is "written out in a big, round hand," and a correspondingly round sum charged the client therefor. "Thus," says Sir Edward Clarke, "at an enormous cost, the knowledge which the solicitor has is conveyed to another person, in order that he may put before the court the matters which probably the solicitor knows much better, and could explain just as well. In most cases the counsel is not the choice of the litigant, but is simply the counsel usually employed by the solicitor. Whether he performs his duty or neglects it, whether he does it well or ill, he is under no legal liability to the man by whom he is paid. The brief may not have told him all the facts; he may not have read it; he may be in another court when the case is being tried; but a client is absolutely in his hands, and cannot sustain any legal claim, even for the return of fees which have not been saved." . . . Thus, "by the artificial rules, the litigants are obliged to bear very heavy costs in order to have their case argued by counsel who very often know less of the matter than the solicitors who employ them, and do not argue it as well. . . . It is even worse in criminal cases. There the necessity of this duplication of parts is a very heavy burden on poor men who are accused."

The change is also urged as of benefit to both "the bar" and the so-called "inferior branch of the profession," by the wider range of activity made possible for young and struggling members of the legal profession in both classes, the greater opportunity for exercise of special qualifications, the admission of barristers to the larger share of work done, and profits received by the solicitors, and the admission of solicitors to the greater honors and emoluments of the bar; also, it is claimed that the standard of the learning and eloquence of the bar will be raised by the admission of solicitors, from whom "a larger knowledge of law is required . . . . than is even now demanded for an admission to the bar;" also "stronger judges" would be obtained.

Sir Edward Clarke's chief argument from example is, that "in the United States the (single) system has been long established, and while the incomes of the leaders of the legal profession are not, I believe, inferior to those earned in this country, and the part taken by lawyers in public life is very considerable, all who have read the reports of legal proceedings in the United States recognize the ability of their advocates and the sound learning which is found on their judicial bench." He recognizes, in closing, grave objections to any sudden change in the existing system.

[1] The Irish Law Times and Solicitors' Journal, Jan. 28, 1888.

"The Law Times" is in favor of abolishing "middle-men in legal procedure," and declares that "no one who has had any experience of the working of the present system can shut his eyes to the fact that it entails unnecessary expense upon the suitor."

"The Law Journal" of Jan. 21 contains an *obiter dictum* which treats the address as an attack upon the bar, and declares, that "an institution like the bar seems likely to stand for some time to come the kind of rhetoric with which it is assailed, whether or not from the tongues of them of its own household."

"The Irish Law Times" is responsible for the following statement: "A bill will be introduced next session in connection with the fusion of the two branches of the legal profession. The bill was introduced last year, but too late to be read a second time. It is called the 'Suitor's Relief Bill,' and is backed by eight Conservative members, and provides that every suitor shall be heard either by barrister or solicitor before any tribunal, and that a solicitor may practise as a barrister, and *vice versa*."

CORRESPONDENCE.

THE JUSTICE OF PRIVATE PROPERTY IN LAND.

CAMBRIDGE, MASS.

IN the January number of the HARVARD LAW REVIEW Mr. Samuel B. Clarke reviews, from a judicial stand-point, Henry George's doctrine concerning land, reaching the conclusion that the ownership of land by private individuals is unjust. The object of this paper is to test the soundness of the reasoning through which this conclusion is reached.

Mr. George's primary propositions, as expressed by Mr. Clarke, are not to be disputed. Few will attempt to deny that "each human being, as against all others, and, so far as interference with him by them is concerned, is entitled to himself, to his life, to his liberty, to the fruits of his exertions, to the pursuit of happiness, subject only to the equal correlative rights of every other human being." Our laws recognize the right of an unborn babe to life, and seek to protect it from violence, even though it be the parents who threaten it. To protect life, liberty, and property, laws are framed, and that such laws may be made and enforced, government is necessary. As a government succeeds or fails in securing to those under its jurisdiction these fundamental rights, it is strong or weak; and, to a marked failure, the natural sequence is a revolution. When an institution is found to be repugnant to the natural rights of individuals, the government or the people, who are the source of government, may abolish that institution. If private property in land is adverse to natural rights the American people, who have for this reason already abolished property in slaves, may abolish property in land. Starting, then, from this common ground, let us follow George's chain of argument, as Mr. Clarke gives it, and see if it contains no unsound link.

Concisely given, the reasoning is as follows: It is agreed that all men have equal rights to life. A right to life means nothing if it does